

State Board of Equalization

OPERATIONS MEMO

For Public Release

No: 1094

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SUBJECT: Bulk Sale of a Business – Internal Revenue Service Form 8594
Sale of Business Property – Internal Revenue Service Form 4797

I. GENERAL

Effective February 13, 1997, the Internal Revenue Service (IRS) requires taxpayers to file Form 8594 when there is a transfer in ownership of a business. Also, IRS Form 4797 is required when there is a sale of a group of assets that makes up a trade or business. The information contained on both of these forms may help in determining the value of fixtures and equipment for both audit and compliance staff.

II. REPORTING REQUIREMENTS

A. Bulk Sale of a Business - IRS Form 8594

Internal Revenue Service Regulation §1.1060-IT (h) and §338 require that the buyer and the seller in an applicable asset acquisition, each report on Form 8594 “*Asset Acquisition Statement*” specific information about the allocation of consideration among the assets transferred. The information contained on this form will allow Board staff to extract information concerning the reported value of assets transferred in the sale or transfer of a business.

Both the seller and the buyer of a group of assets that make up a trade or business are required to file Form 8594 to report such sales if goodwill or going concern value attaches to, or could attach to, the assets sold or transferred and if the buyer’s basis in the assets is determined only by the amount paid for the assets. The IRS requires both the buyer and the seller of the assets to prepare and attach the form to their Federal Income Tax Return (Forms 1040, 1041, 1120, 1120S, etc).

Generally, Form 8594 would be attached to the Federal Income Tax Return for the year in which the sale occurred. However, a supplemental Form 8594 must be filed if the buyer or seller is amending a previously filed form because of an increase or decrease in the buyer’s cost of the assets or the amount realized by the seller.

The information that must be reported on Form 8594 includes the following:

1. The name, address, and taxpayer identification number of the buyer and the seller
2. The purchase date
3. The total consideration for the assets
4. The amount of consideration allocated to each class of assets and the aggregate fair market value of assets of each class
5. A statement as to whether the buyer and seller agreed upon the fair market value of the assets in the contract of sale
6. The useful life of each class III intangible and amortizable asset (Class III assets are all tangible and non-tangible assets. Examples of class III assets include furniture and fixtures, land, buildings, equipment, and accounts receivable.)
7. A statement as to whether, in connection with the acquisition of the group of assets, the buyer also obtained a license, a covenant not to compete, or entered into a lease agreement, an employment contract, a management contract, or similar arrangement between the buyer and the seller (or the managers, directors, owners, or employees of the seller).

Exceptions to the requirement for filing IRS Form 8594 include the following:

1. The acquisition is not an applicable asset acquisition. An applicable asset acquisition includes both a direct and indirect transfer of a group of assets, such as a sale of a business, if good will or going concern value attaches to, or could attach to, the assets, and the buyer's basis in the assets is wholly determined by the amount paid for the assets.
2. A group of assets that makes up a trade or business is exchanged for like-kind property in a transaction to which IRS §1.1031(j)-1 applies. As a general rule, the application of §1031 requires a property-by-property comparison for computing the gain recognized, and the basis of property received in a like-kind exchange.
3. A partnership interest is transferred.

B. Sale of Business Property - IRS Form 4797

The purpose of IRS Form 4797 is to report the sale or exchange of property used in a trade or business; depreciable and amortizable property; oil, gas, geothermal, or other mineral properties; and Code Section 126 (certain cost-sharing payments) property. In addition to the above, Form 4797 is used to report the following:

1. The involuntary conversion of property used in a trade or business and the capital assets held in connection with a trade or business or a transaction entered into for profit, as well as the disposition of non-capital assets other than inventory or property held primarily for sale to customers in the ordinary course of a trade or business.
2. The disposition of capital assets not reported on IRS Schedule D.
3. The recapture of Section 179 expense deductions for partners and S Corporation shareholders from property dispositions by partnerships and S corporations. The deduction allows for up to the entire cost of certain depreciable business assets,

other than real estate, in the year purchased, which may be used as an alternative to depreciating the asset over its useful life. Taxpayers cannot use the Code Section 179 deduction to the extent that it would cause them to report a loss from their business.

4. The computation of recaptured amounts under Code Section 179 and Code Section 280F(b)(2), when the business use of Section 179 or listed property drops to 50% or less (Code Section 179 - The limitation on depreciation for luxury automobiles; limitation where certain property is used for personal purposes).

III. REQUESTING INFORMATION

Staff may request a copy of IRS Form 8594 and Form 4797 from the taxpayer to determine the sales price of the tangible personal property when it is either sold or transferred under the above conditions. If the information is not readily available from the taxpayer, staff may request the information through Form BOE-33, "Request for Federal Tax Information". Requests should be directed to the Sales and Use Tax Department, Program Planning Manager, MIC: 92. After the pertinent information has been obtained from the return it should be returned immediately to the designated person (custodian of records) and sent back to the Program Planning Manager. Staff should observe guidelines for use of confidential information as outlined in BEAM 7216.

IV. OBSOLESCENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

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Distribution: 1-D

Attachments: IRS form 8594
IRS form 4797